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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[16 February 1991]

INTERNATIONAL HUMAN RIGHTS LAW APPLICABLE TO ACHIEVING RESOLUTION OF NATIONALITIES-CONFLICTS WITHIN THE SOVIET UNION

1. At a seminar sponsored by Human Rights Advocates, scholars of international law and political science discussed ways of achieving peaceful resolution of nationalities-conflicts in the Soviet Union from the perspective of international law and procedures. The Seminar took place at the University of California at Berkeley, School of Law (Boalt Hall), on 11-12 January 1991.

2. Given current and impending conflicts centred on nationalities issues in the Soviet Union, and given the distinct characteristics of each situation, seminar scholars agreed to use the case of Nagorno-Karabagh as a jumping-off point. Problems arising in the Nagorno-Karabagh arena were laid out in terms of categories under human rights law. The participants discussed relevant

law and debated the pros and cons of various procedures, particularly those involving the United Nations. They considered forums in which the United Nations and the Soviet Union could co-operate on developing effective procedures for the resolution of nationalities-conflicts.

Nationalities-conflicts in the Union of Soviet Socialist Republics

3. The purpose of the seminar was to articulate broadly applicable principles and methods of using human rights law, in order to help guide the peaceful resolution of nationalities-conflicts. The overall range of claims, rights and past and current human rights grievances were then discussed, including self-determination, secession, territorial integrity and cultural, linguistic and religious identity, as well as issues involving the environment.

4. Because different groups' claims and demands are specific to their situation, they tend to create discrete rather than universal, models. With problems of State sovereignty, self-determination, and de facto versus de jure conformity by legal authorities to domestic and international law concerning human rights, generalizations become impractical. While solutions necessarily differ, however, the process of law to solve the conflicts, and the international law principles to guide the process, could be the same.

5. Participants pointed out the extent to which the Republics' demands for greater self-determination challenge the legitimacy of the central Government. National and indigenous minorities, Russian settler communities in non-Russian Republics, and other aggrieved groups throughout the Soviet Union, similarly challenge the legitimacy of the central Government, as well as of the given Republics. Concern was expressed that there are those in the Soviet Union who shield the argument for subordination of nationalities rights under the cloak of greater protection of individual human rights.

6. Awareness of the role of the United Nations and the timeliness of the current session of its Commission on Human Rights informed the discussions.

Challenges of international human rights law

7. Participants discussed United Nations human rights law as it applies to the Union of Soviet Socialist Republics. Questions were raised about permitted derogations under the International Bill of Human Rights and its Covenant on Civil and Political Rights in relation to current emergencies in the Soviet Union.

8. Further ongoing support was urged for what was regarded as a basic rule of human rights law: the individual everywhere and always is entitled to the greatest protection of laws clearly applicable. It was encouraging to note that recent clauses of the new Soviet law on freedom of conscience and religion appear to establish the superiority of treaty requirements over all weaker provisions of Soviet law.

9. The discussion then focused on the relevance of the Nuremberg principles to the nationalities-conflicts as part of customary international law, and applying not only to criminal but also to civil wrongdoing. Nearly all conduct proscribed in terms of criminal responsibility is also, implicitly, proscribed in terms of civil responsibility. The "Nuremberg Crimes" apply to acts committed by government officials.

10. So far as United Nations mediation for peaceful resolution of Soviet nationalities-conflicts, participants stated that the United Nations could play an advisory role if so requested by the Soviet Government: it could help organize referenda; it could also station peace-keeping forces between disputing parties in the Soviet Union, provided that the international community proved willing to finance the operation.

11. Participants pointed out the need for effective government in order to protect human rights. In the Soviet Union there is a vacuum of governmental authority as a result of inconclusive attempts to redistribute power between the Centre and the Republics.

12. It was further observed that self-determination, the root cause of nationalities-conflicts, and the sovereignty issues of the Republics will have to be addressed while at the same time maintaining protection of human rights - the other side of the same coin. To this end, it would be advantageous to provide for separate United Nations membership for all Soviet Republics (as provided in the Soviet Constitution and as accepted by the United Nations in the case of the Ukrainian SSR and the Byelorussian SSR. This could provide the international community with direct access to monitoring human rights within the Republics, as well as providing the Republics with access to United Nations procedures for resolution of nationalities-conflicts.

Relevant forums and applicable procedures

13. The importance of the "co-operation" approach was stressed as opposed to the "confrontation" approach in the international community's attempts to find solutions to the major rights in question: self-determination of peoples; discrimination based on race, ethnic or national origin or religion; minority rights; and other civil, political, economic, social and cultural rights.

14. Challenges to those rights could stimulate approaches to a number of United Nations bodies, including the General Assembly, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee, the Commission on the Elimination of Racial Discrimination, the United Nations Educational, Scientific and Cultural Organizations, and the International Court of Justice.

Conclusions and summary

15. Strategies and forums that are guided by international law could provide productive avenues leading to conflict resolution and prevention of human rights violations. Among them:

(a) The Commission on Human Rights could request a study on nationalities-conflicts in the Soviet Union from its Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(b) The United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights might be tapped to help fund semi-independent organizations. Further, the Advisory Service is capable of providing expertise to help bring domestic laws into conformity with international instruments;

(c) The Secretary-General could use his good offices;

(d) United Nations procedures under ECOSOC resolutions 1503 and 1235 could be used to bring grievances to the attention of the international community;

(e) The Commission on Human Rights could serve as a forum for nationalities-conflicts issues. Thematic and country rapporteurs could be appointed by the Commission.

16. The seminar concluded on an optimistic note suggesting that problems of nationalities-conflicts now facing the international community may be productively handled within the United Nations, thanks to the increasing flexibility of international human rights law and its advocates.